

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petitions: 45-003-13-1-5-00217-16
45-003-16-1-5-00477-17
Petitioner: James Nowacki
Respondent: Lake County Assessor
Parcel: 45-08-18-303-017.000-003
Assessment Years: 2013 & 2016

The Indiana Board of Tax Review (“Board”) issues this determination, finding and concluding as follows:

Procedural History

1. Petitioner initiated a 2013 appeal with the Lake County Property Tax Assessment Board of Appeals (“PTABOA”). The PTABOA issued notice of its final determination on November 19, 2015. On January 6, 2016, Petitioner filed a Form 131 petition with the Board.
2. Petitioner initiated a 2016 appeal with the PTABOA. The PTABOA issued notice of its final determination on March 9, 2017. On April 24, 2017, Petitioner filed a Form 131 petition with the Board.
3. Petitioner elected to have the appeals heard under the Board’s small claims procedures. Respondent did not elect to have the appeals removed from those procedures.
4. Ellen Yuhan, the Administrative Law Judge (“ALJ”) appointed by the Board, held the administrative hearing on March 5, 2018. Neither the ALJ nor the Board inspected the property.
5. James Nowacki, Petitioner, was sworn and testified. Robert Metz and Joseph James, Lake County Appeal Officers, were sworn and testified for Respondent.¹

Facts

6. The subject property is a vacant residential lot located at 4313 W. 26th Place (approx.) in Gary.
7. For 2013, the assessed value was \$3,000. For 2016, the assessed value was \$2,600.

¹ Terrance Durousseau from the assessor’s office was present but was not sworn and did not testify.

8. Petitioner requested an assessed value of \$2,000 for both years.

Record

9. The official record contains the following:

- a. A digital recording of the hearing
- b. Exhibits:

Petitioner Exhibit 1:	GIS Map
Petitioner Exhibit 2:	Property record card (“PRC”)
Board Exhibit A:	Form 131 petitions and attachments,
Board Exhibit B:	Notices of hearing,
Board Exhibit C:	Hearing sign-in sheet,

- c. These Findings and Conclusions.

Burden

10. Generally, a taxpayer seeking review of an assessing official’s determination has the burden of proving that a property’s assessment is wrong and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm’rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998). A burden-shifting statute creates two exceptions to that rule.
11. First, Ind. Code § 6-1.1-15-17.2 “applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year.” Ind. Code § 6-1.1-15-17.2(a). “Under this section, the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court.” Ind. Code § 6-1.1-15-17.2(b).
12. Second, Ind. Code § 6-1.1-15-17.2(d) “applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under Ind. Code § 6-1.1-15,” except where the property was valued using the income capitalization approach in the appeal. Under subsection (d), “if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township

assessor (if any) making the assessment has the burden of proving that the assessment is correct.” Ind. Code § 6-1.1-15-17.2(d).

13. These provisions may not apply if there was a change in improvements, zoning, or use. Ind. Code § 6-1.1-15-17.2(c).
14. The assessed value was \$3,000 for 2012 and 2013. Petitioner, therefore, has the burden of proof for 2013. The assessed value decreased from 2015 to 2016. Petitioner, therefore, also has the burden of proof for 2016.

Summary of Parties’ Contentions

15. Petitioner’s case:
 - a. Petitioner claims the subject property is in a blighted area with a high crime rate and a lack of city services. He contends it is similar to three other properties he has appealed: 4501 W. 26th Place, 4512 W. 26th Place, and 4309 W. 26th Place. All of the properties are the same size, have the same characteristics, and are in the same area. They are all also affected by external obsolescence. He argues the properties should have the same assessed values in order to be consistent and fair and that each parcel should be assessed at \$2,000. *Nowacki testimony; Pet’r Ex. 1.*
 - b. Petitioner contends that the external obsolescence affecting the property is such that no one would have an interest in building there, that a bank would not have any interest in financing construction, and that no one would have an interest in living in such a blighted area. *Nowacki testimony.*
 - c. Petitioner contends the assessor doesn’t feel the information on the PRC is important. He claims this is evident from the erroneous Market Model on the PRC which lists the topography, utilities, neighborhood life cycle, paved roads or lack thereof, and the incorrect influence factors. *Nowacki testimony; Pet’r Ex. 2.*
 - d. Petitioner acquired the property at auction for \$100. He contends market value was established at the auction that was attended by 500 eligible and able bidders. According to him, nobody bid more than the minimum for these properties. *Nowacki testimony.*
 - e. Petitioner contends the over-assessment and high taxes drive people from their properties. In this case, he says the previous owner abandoned the property. He claims the auditor’s office acquired it in 1988 and sat on it for 20 years with no one showing any interest until he purchased it. *Nowacki testimony; Pet’r Ex. 2.*
16. Respondent’s case:
 - a. Respondent agrees with Petitioner on some issues. For example, he agrees that the area is blighted and the market is very poor. He also acknowledges the high crime

activity in the area. Respondent, however, contends the assessed values reflect those problems because they are much lower than those of other properties in other areas of the county. *James testimony.*

- b. Respondent contends the values for the years at issue are low for a 50' by 130' buildable lot. He considers the lot to be buildable in light of current zoning restrictions although he acknowledges that it is hard to believe anyone would build a home on it and live in such a blighted area. *James testimony; Metz testimony.*
- c. Respondent contends Petitioner has failed to present any market evidence to suggest the value should be \$2,000 for either year. *James testimony.*

ANALYSIS

- 17. Petitioner failed to make a prima facie case for a reduction in the assessed values. The Board reached this decision for the following reasons:
 - a. Indiana assesses real property based on its true tax value, which the Department of Local Government Finance (“DLGF”) has defined as the property’s market value-in-use. Ind. Code § 6-1.1-31-6(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). To show a property’s market value-in-use, a party may offer evidence that is consistent with the DLGF’s definition of true tax value. A market value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice (“USPAP”) will often be probative. *Kooshtard Property VI v. White River Township Assessor*, 836 N.E.2d 501, 506 (Ind. Tax Ct. 2005). Parties may also offer evidence of actual construction costs, sales information for the property under appeal, sale or assessment information for comparable properties, and any other information compiled according to generally accepted appraisal principles. *See Id.*; *see also*, I.C. § 6-1.1-15-18 (allowing parties to offer evidence of comparable properties’ assessments to determine an appealed property’s market value-in-use).
 - b. Regardless of the method used to prove a property’s true tax value, a party must explain how its evidence relates to the subject property’s market value-in-use as of the relevant valuation date. *O’Donnell v. Dep’t of Local Gov’t Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). The valuation date for the 2013 assessment date was March 1, 2013. For a 2016 assessment, the valuation date was January 1, 2016. Ind. Code § 6-1.1-2-1.5.
 - c. Petitioner purchased the property for \$100. He did not request the property be assessed for the purchase price and instead contends the property should be assessed at \$2,000 for each year. He presented no evidence to support that value. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998).

- d. Petitioner contends the property suffers from external obsolescence. External obsolescence is caused by an influence outside of a property's boundaries that has a negative influence on the property's value. *Clark v. Dep't of Local Gov't Fin.*, 77 N.E.2d 1277 (Ind. Tax Ct. 2002). To receive an adjustment for obsolescence, a property owner must identify the causes of obsolescence present and quantify the amount of obsolescence it believes should be applied to his property. *Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230, 1241 (Ind. Tax Ct. 1998). While Petitioner identified some issues that might be the cause of external obsolescence, he failed to quantify any amount related thereto.
- e. Petitioner contends there are numerous errors on the PRC, specifically regarding the characteristics of the property. However, he did not show how any changes to those characteristics would affect the market value-in-use of the property. Simply contesting the methodology is insufficient to make a prima facie case of error in the assessment. *Eckerling v. Wayne Co. Ass'r*, 841 N.E.2d at 674, 677 (Ind. Tax Ct. 2006). To successfully make a case, Petitioner needed to show the assessment does not accurately reflect the subject property's market value-in-use. *Id. See also P/A Builders 7 Developers, LLC v. Jennings Co. Ass'r*, 842 N.E.2d 899,900 (Ind. Tax Ct. 2006) (explaining that the focus is not on the methodology used by the assessor but instead on determining what the correct value actually is).
- f. Petitioner failed to make a prima facie case for reducing the subject property's assessment for either year at issue. Where a petitioner has not supported its claim with probative evidence, the respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

CONCLUSION

- 18. Petitioner failed to establish a prima facie case that the 2013 and the 2016 assessed values were incorrect. Consequently, the Board finds for Respondent.

FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, the Board determines the 2013 and 2016 values should not be changed.

ISSUED: May 31, 2018

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.